

Judge Frees Wiretap Data On Leftists

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A federal judge here has ordered the federal government to disclose within 30 days the nature and extent of electronic surveillance and wiretaps of eight antiwar leaders and four leftist groups.

U.S. District Judge Aubrey E. Robinson, acting yesterday on a civil suit first filed in June 1969, brushed aside the government's contention that the information was linked to "national security" and should only be examined by him in private.

The suit was brought by eight persons charged with trying to disrupt the 1968 Democratic National Convention in Chicago and nine civil rights and antiwar groups. Five of the groups since have dropped from the litigation. Action in the suit was delayed while criminal charges against the Chicago defendants were being heard.

ROBINSON, in a two-page order, said that the government's attempt to have only him examine its answers to the plaintiffs' written questions about the surveillance was "highly irregular and is nowhere contemplated nor authorized by the Federal Rules of Civil Procedure."

Robinson also said it was "inappropriate" for the government "to assert legal defenses" based on executive privilege and national security.

The plaintiffs argued in October that the government's request that Robinson inspect the wiretap information in private "is not only procedurally absurd . . . but also in direct opposition to any concept of an adversary system of the administration of justice."

ROBINSON'S order cannot be appealed, but the government could ask him to reconsider his decision or to order that the information be placed under seal once the plaintiffs have received it.

The government had submitted a 43-page argument to support its objection to answering the plaintiffs' questions, which ask for detailed information about when, why and for how long the surveillance was in effect and who authorized it. The plaintiffs have been trying to obtain "all books, records, documents, tapes, logs, memoranda and other tangible writings" relating to the surveillance.

AMONG THE government's papers in the case are affidavits from two former attorneys general, John N. Mitchell and Richard Kleindienst, admitting that the plaintiffs were overheard on wiretaps being conducted "to gather foreign intelligence information concerning domestic organizations which seek to use force and other unlawful means to attack and subvert the existing structure of the government."

Thomas Foran, the U.S. attorney who was conducting the Chicago trial, stated in the court papers that the recording of conversations was "expressly authorized by the attorney general (then Mitchell) to gather intelligence information deemed vital to the national security."

The suit, filed by American Civil Liberties Union attorneys, attacked the constitutionality of the Justice Department's then-current theory that it could conduct electronic surveillance of domestic groups without

court approval on grounds of national security.

A 1972 Supreme Court ruling stated, however, that such wiretaps and surveillance are unconstitutional without prior approval of a judge.

The government is now claiming that it acted in "good faith" at the time and is asking Robinson not to apply the 1972 decision retroactively.

The suit was brought under provisions of the Omnibus Crime Act of 1968, which provides for payments to those who are wiretapped of \$100 a day for the duration of the tap. The plaintiffs also asked for an unspecified amount of damages in the suit.

The plaintiffs in the case are David Dellinger, Rennie Davis, Tom Hayden, Jerry Rubin, Abbie Hoffman, Bobby Seale, John Froines and Lee Weiner. The four organizations are the Black Panther Party, the Southern Conference Education Fund, the Catholic Priests Fellowship and the War Resisters League.